Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07924/2016

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 14 August 2017	**On 18 August 2017**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR KHEDER HUSSAIN KOSHNAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Martin, Solicitor
For the Respondent: Mr M Matthews, Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge G J Ferguson, promulgated on 6 March 2017 dismissing his appeal against the decision of the respondent made on 26 July 2016 to refuse his protection claim.

2. The appellant is a citizen of Iran of Kurdish ethnicity. The basis of his case is that he had worked as a "smuggler" taking goods across the Iran-Iraq border and on two occasions had helped his cousin who was a supporter of the KDPI by transporting

literature for the KDPI. His cousin was arrested by the Authorities and the appellant's family home was subsequently raided by the security forces (Ettelaat) leading him to conclude that his cousin had revealed his name under torture. The appellant then made arrangements to leave Iran and travelled to the United Kingdom via Turkey, leaving the country illegally.

3. The respondent's case is set out in the refusal letter dated 26 July 2016. The respondent rejected all aspects of the appellant's claim other than him being a national of Iran.

4. The judge heard evidence from the appellant as well as a Mr Drakshani who is involved with the KDPI in the United Kingdom.

5. The judge noted [17] that the primary issue in the case was credibility, it being accepted by the respondent that if the Authorities were looking for him because they believe he had assisted the KDPI then the appellant would be at real risk of persecution. The judge found that: -

   (i) although the case that the core of the claim was broadly consistent, there was a significant discrepancy as to whether the appellant had learned of his cousin's arrest after he had returned home from a trip or during that trip, this being significant and the appellant's evidence being inconsistent between what he had said in his witness statement and interview and with what he had said in oral evidence [18] with reference to [7];

   (ii) it was not consistent with the background evidence as to how the Iranian Authorities deal with the families of those suspected of involvement with a separate party or who had been caught in possession of a KDPI flyer that they had not been targeted and that it was not plausible the whole family would remain in their home and that only the appellant would have needed to flee to the United Kingdom in fear [20];

   (iii) the appellant had not been truthful about the contact he has had with the family since he arrived in the United Kingdom [21], it not being plausible that he would not have made contact with his family to let them know he was safe [22];

   (iv) the appellant's credibility was damaged by his failure to claim asylum en route [23]; and

   (v) having had regard to **SSH [2016] UKUT 00308** the appellant was not at adverse risk from the Iranian Authorities despite the fact that he had left illegally;

   (vi) there was no evidence to show that there was a real risk that the basic activities the appellant had undertaken involving himself with the KDPI in the United Kingdom would come to the attention of the Authorities in Iran [26].

6. The appellant sought permission to appeal on the grounds that: -

(i) the material cited by the judge at [17] do not actually reflect the entirety of that part of the evidence and did not justify a finding by the judge that the family would all be at risk and they would have fled; and, whilst accepting that there would be pressure on families in the appellant's family's position it was not sufficient to justify a finding the family would be at risk and would have fled;

(ii) the finding that the appellant had been untruthful about the contacts he had had with his family [21] was infected by the above error;

(iii) the judge had erred failing to provide adequate reasons why there was no evidence to show that there is a real risk that the appellant's activities in the United Kingdom as evidenced by Facebook photographs would not have come to the attention of the Authorities in Iran.

7. The appellant's case is that he is a smuggler who had on two occasions assisted his cousin to take KDPI documents into Iran. At Q85 in his interview he was asked why he had to leave Iran and stated:

> "The second time when I helped my cousin, when I took documents to my home. After two days my cousin came. He took the documents and went to Sardasht. Then three days after my paternal uncle telephoned my father, that Khalid was arrested by Ettelaat. I was on a trip when they said Khalid was arrested. Two days after Khalid was arrested Ettelaat came to my house. I was on the way going home. People from my village, his name was Mohsen was with me, his brother rang him, told him to tell Kheder not to go back home because Ettelaat were looking for him".

8. There is a degree of ambiguity in the phrase," I was on a trip when they said Khalid was arrested", as it is unclear whether it is meant that he learned of the arrest whilst on the trip or that he later learned that Khalid had been arrested, that event having taken place while he was on the trip. The position is clarified in the witness statement where at [11] the appellant said that he was away on a trip doing his smuggling at the time when Khalid had been arrested and it was on his return from a smuggling trip when someone from his village, when that man's brother rang to tell the appellant he should not go home.

9. In his oral evidence, however, at [7] the appellant's evidence is recorded as follows: -

> "… he said that his uncle had called his father to tell him. He said: 'My father told me that he got a call from his brother to say that his brother's son was arrested. I found out when it was night time and I was at home. The day the Ettelaat raided my family house was when I was coming back from the border with another friend called Mohsen.'"

10. The judge then records that the appellant was referred to what he had said in answer to question 85 and confirmed his evidence.

11. The judge was therefore entitled to draw inferences from a significant discrepancy and it was also open to him to note that the appellant's evidence at hearing was that he had continued his normal routine after he found out that his cousin had been arrested. That too was a matter that the judge was entitled to attach weight. Accordingly, there is no merit in the challenge to this finding.

12. There is no merit in the challenge to the judge's assessment of the background evidence at [19] to [20]. Viewing the evidence as a whole, of which only a part is reproduced in the decision, it is clear that there is a substantial body of evidence to show that the families are targeted and at times suffer severe punishment. Mr Martin effectively conceded as much and was unable to persuade me that the judge's assessment of the evidence was perverse, inadequate or otherwise unlawful. It was open to the judge to note that it is not credible and that the appellant's family would not have been targeted by the Authorities in the circumstances of what he had said and also, given the appellant's evidence referred to above that he continued his ordinary routine also appears inconsistent.

13. In the absence of any merit to the challenges made to the findings that the appellant lacked credibility, there is no basis on which it can be asserted that the judge erred at [21] in finding that the appellant had not been truthful about the contact he had had with his family since arrival in the United Kingdom. Further, the judge gave further reasons for such a finding at [21] and [22], the judge pointing out properly an inconsistency in the appellant's assessment of the risk to his family.

14. There is no merit in the challenge to the judge's assessment of the risk flowing from the fact that the appellant has been shown on Facebook attending a demonstration. I pressed Mr Martin on the point but he was unable to provide any evidence to show that the Iranian authorities would take any steps to identify the appellant on return to Iran. As Mr Martin was able to take me to passages in the COIR indicating the breadth of activities carried out by the Iranian Secret Services, this information provides nothing specific to show that they undertake the difficult and labour intensive task of identifying people from photographs of those attending demonstrations in the United Kingdom. Whilst there is evidence that people on duty at the airport on return to Iran are capable of checking up to 200 faces, there is no evidence to show that the appellant's face would be amongst those displayed or given to the staff on arrival, still less that there would be any such identification of him.

15. Mr Martin in his submissions indicated that there has been a change in the appellant's situation since the decision, in that he appears to have become a member of the KDPI, but that was not something and there was no information to that effect before Judge Ferguson. Mr Martin accepted that.

16. Accordingly, for these reasons, I find no merit in the grounds of challenge to the decision of the First-tier Tribunal. I therefore uphold it.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal did not involve the making of an error of aw and I uphold it.

2. No anonymity direction is made.

Signed Date: 18 August 2017

Upper Tribunal Judge Rintoul